IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1979 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAILESHKUMAR AMIARCHAND SHAH

Versus

SURAT MUNICIPAL COMMISSIONER

Appearance:

MR BS PATEL for Petitioner

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 19/03/2001

ORAL JUDGEMENT

I have heard Mr.B.S.Patel, learned Counsel appearing on behalf of the petitioner. The present application has been filed, challenging the show-cause notice issued by the respondent No.2, City Development Officer, Surat Municipal Corporation, proposing the

cancellation of permission and also demolition of the building constructed by the petitioner, Shaileshkumar Amiarchand Shah. It is submitted by Mr.Patel that he has no objection to appear before the respondent No.2 and submit a detailed reply, but the apprehension of the petitioner is that the matter may not be decided in accordance with law and the petitioner's building may be demolished by the respondent No.2, being influenced.

It is also submitted that the petitioner has constructed the building after obtaining the approval of the plan and design from the Municipal Corporation. Now a question has been raised that the original owner obtained similar permission for construction of building, leaving open space of 225 sq.mtr. It is further submitted by Mr.Patel that while constructing the present building, the petitioner has submitted fresh plan, specification and design to the Surat Municipal Corporation and after verification of all the matters, the Corporation has permitted the petitioner to construct the building and the petitioner has accordingly constructed the building within the area and according to the plan, specification and design as approved by the Surat Municipal Corporation. Mr.Patel accordingly submitted that since the petitioner has constructed the building strictly in accordance with the plan, specification and design approved by the Corporation, the respondent No.2, City Development Officer, Surat Municipal Corporation has no authority to issue show-cause notice at this stage. The petitioner, therefore, apprehends that action may be taken against the petitioner by cancelling the approval and also by demolishing the building without properly appreciating the documents that are approved by the Corporation. It appears that against the order of cancellation or demolition by the respondent No.2, City Development Officer, if the petitioner is aggrieved by such order, he may approach the State Government under revisional jurisdiction and the order of the Government shall be final in this regard. Mr.Patel further expressed his apprehension that the respondent No.2, after passing the order may not wait for the said order from the Government and in the meantime he will proceed with the demolition of the building. I do not find any valid ground for such apprehension on the part of the petitioner. The order proposed to be passed by the respondent No.2 is quasi judicial in nature, as the authority will have to hear the petitioner before passing any order and such an order is subject to judicial review by the Government. Therefore, it is expected that the respondent No.2, City Development Officer, shall allow a reasonable time to the

petitioner, if he is aggrieved by his order, so as to enable him to appear before the government in revision.

In view of the aforesaid observations, the learned Counsel for the petitioner does not press this application and accordingly it is disposed of as not pressed. No order as to costs.

19-3-2001 (P.K. Sarkar, J.)

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